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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/619,061
Filing Date: July 14, 2003
Appellant(s): GRAY ET AL.

Carl P. Hemenway
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 25, 2007 appealing from the Office action mailed January 26, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,710,161	Bardman et al	3-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardman et al, U.S. Patent No. 6,710,161.

Bardman et al, U.S. Patent No. 6,710,161, discloses a copolymer composition comprising 80-99.9% by weight of an ethylenically unsaturated monomer, such as styrene, methacrylic acid, methyl methacrylate, and butyl acrylate (see abstract, col. 3, lines 37-61, and col. 4, lines 9-17), wherein the copolymer has a molecular weight of at least 5,000 (see col. 4, lines 18-22). It is further taught by Bardman et al that the copolymer further contains a crosslinking polyvalent metal ion, such as zinc acetate, and compounds containing calcium, magnesium, and barium in a ratio of 0.25-3.0 (see col. 11, line 55-col. 12, line 26), that the copolymers are used in composite particles, wherein pigment particles are surrounded by the copolymers (see col. 13, lines 12-24), and that the composite particles may further contain anionic polyelectrolyte dispersants, such as copolymers containing acrylic acid (see col. 14, lines 51-63). Bardman et al further discloses that the copolymer composition is applied to fiber, cellulosic substrates, and woven and nonwoven materials, such as cloth, wool, synthetic and

natural fibers, and textiles (see col. 15, lines 52-67). Specifically, note Examples 1-5. Although Bardman et al generally discloses a copolymer containing 80-99.9% by weight of ethylenically unsaturated monomers, such as styrene, methacrylic acid, methyl methacrylate, and butyl acrylate, the reference does not require such copolymer compositions containing these monomers with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a copolymer composition, as taught by Bardman et al, which contained 80-99.9% by weight of styrene, methacrylic acid, methyl methacrylate, and butyl acrylate monomers, because such copolymer compositions fall within the scope of those taught by Bardman et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a copolymer composition containing 80-99.9% by weight of styrene, methacrylic acid, methyl methacrylate, and butyl acrylate monomers is expressly suggested by the Bardman et al disclosure and therefore is an obvious formulation. Furthermore, the examiner asserts that "Mere fact that a reference suggests multitude of possible combinations does not in and of itself make any one of those combinations less obvious." *Merck v. Biocraft, 10 USPQ2d 1843 (Fed. Cir. 1989).*

(10) Response to Argument

Applicant argues that Bardman et al, U.S. Patent No. 6,710,161, does not teach or suggest in general an aqueous system that contains fabric. However, the examiner

respectfully disagrees. Specifically, Bardman et al discloses that the copolymer composition is applied to fiber, cellulosic substrates, and woven and nonwoven materials, such as cloth, wool, synthetic and natural fibers, and textiles, wherein the textile is saturated with the composition (see col. 15, line 52-col. 16, line 15), as required in the instant claims. Furthermore, Bardman et al clearly discloses that the polymer is dispersed in an aqueous medium (see abstract, col. 4, lines 62-63, and Examples 1-5), which meets the limitation "in contact with an aqueous system" that is recited in the instant claims. The examiner notes applicant's display of U.S. Patents that contain the term "aqueous system", but respectfully maintains that Bardman et al clearly teaches a polymer composition that is dispersed in an aqueous medium and is applied to a textile or fabric, which meets the limitations of the instant claims.

Applicant further argues that Bardman et al does not teach or suggest a composition in which a polyelectrolyte surrounds an active ingredient. However, the examiner respectfully disagrees. Specifically, Bardman et al clearly discloses that the copolymers are used in composite particles, wherein pigment particles are surrounded by the copolymers (see col. 13, lines 12-24), which meets the limitations of dependent claims 3 and 10. Furthermore, the examiner asserts that applicant defines the term "beneficial agent" (i.e. active ingredient) as a substance for which it is desirable and/or advantageous to trigger delivery into an environment of use (see page 26, lines 9-11 of the instant specification", which would clearly include a pigment. Also, the examiner notes that page 26, line 18 of the instant specification lists "inorganic additives" as a suitable beneficial agent, which would also include a pigment.

Applicant further argues that Bardman et al does not teach a fabric laundry wash cycle, as recited in instant claims 11 and 12. In response to applicant's argument that Bardman et al does not teach a fabric laundry wash cycle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, the examiner asserts that the aqueous polymer composition disclosed in Bardman et al would be capable of performing the intended use of a fabric laundry wash cycle, since Bardman et al discloses that the copolymer composition is applied to fiber, cellulosic substrates, and woven and nonwoven materials, such as cloth, wool, synthetic and natural fibers, and textiles, wherein the textile is saturated with the composition (see col. 15, line 52-col. 16, line 15).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Brian P. Mruk/
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